

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). (This is a PLR.)

October 19, 2006

Dear Xxxxx:

This letter is in response to your letters dated March 7, 2005 and April 12, 2006 as well as various follow-up e-mails, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of ABC we hereby respectfully requests [sic] a Private Letter Ruling from the Department of Revenue regarding the taxability for Retailer's [sic] Sales Tax of monthly licenses, support fees, and services paid by ABC to XYZ pursuant to 2 Ill. Adm. Code 1200.

I. TAXPAYER'S NAME, ADDRESS and TAXPAYER IDENTIFICATION NUMBER:

NAME/ADDRESS

Type of Tax: Illinois Retailer's Sales Tax. [sic]

II. GENERAL NATURE OF TAXPAYER'S BUSINESS ACTIVITY AND SUPPORTING DOCUMENTS

ABC sells equipment, parts and services for refrigerated trailers. The software is designed to help with placing, tracking and managing orders. XYZ is a finance company that finances capital acquisitions for customers.

On or about July 20, 2004, ABC financed software, software licenses and support services through XYZ for \$238,105.63, inclusive of Illinois sales tax. A copy of the Conditional Sale Agreement and related attachments (hereinafter referred to collectively as 'CSA') between ABC and XYZ is attached for review. The term of the agreement is thirty-six (36) months. Under the payment terms, ABC is required to make monthly payment of \$7,077.48 (inclusive of Illinois sales tax) to XYZ.

Attachment 'A' of the financing agreement is the original invoice from the software company, COMPANY. The original invoice itemizes all items, both taxable and nontaxable, financed through XYZ.

III. ISSUE

Are the license fees subject to IL ROT?

Are the support/maintenance fees subject to IL ROT?

Are the installation/training fees subject to IL ROT?

Can XYZ rely on the itemized invoice (attachment 'A' to the finance agreement) for determining what the tax base is for Illinois Retailers Occupational [sic] Tax?

IV. STATEMENT OF RELEVANT AUTHORITIES

Based upon the above description of the agreement between ABC and XYZ, ABC's nontaxable purchases financed through XYZ should be exempt for ROT. Separately stated nontaxable items such as phone support, installation and training are not subject to ROT under Section 130.1935(b).

V. STATEMENT OF CONTRARY AUTHORITIES

The taxpayer has been charging tax on the full monthly payment under the financing agreement.

VI. ADDITIONAL INFORMATION

The Department of Revenue is not conducting an audit or investigation of the taxpayer's business or the taxpayer's business with respect to this issue.

The taxpayer has not received a notice of adjustment, a notice of deficiency, or an assessment with respect to this issue.

The taxpayer is not presently pursuing any protest, litigation or negotiation on this issue with the Department of the Revenue.

The taxpayer respectfully request deletions of certain information from private letter rulings before public dissemination as set forth in 2 Ill. Adm. Code 1200-110(d). In

addition, the taxpayer respectfully deletion [sic] of all information related to XYZ before public dissemination.

Requests for additional information from the taxpayer as deemed necessary by the Director of Revenue to issue the desired ruling should be made to me. A power of attorney authorizing me to represent ABC with regard to this matter at hand is enclosed. The taxpayer respectfully requests a conversation and/or conference with the Department of Revenue if it is unable to issue the ruling desired.

If you need to contact me, you may do so by calling #, by mail to the address listed above, or by e-mail to the e-mail address listed below.

Your prompt reply to this matter is appreciated.

DEPARTMENT'S RESPONSE

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4).

After reviewing the materials included with your request, it is the Department's position that we must decline to issue a Private Letter Ruling. The ruling you request is very fact intensive. Although you have provided additional information each time we have asked, we are not comfortable issuing a Private Letter Ruling. We believe that a Department tax auditor would be the appropriate person to review all relevant information and documents in order to consider your allegations of fact.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

Cc: Wayne Danne man